

DEC 10 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES M. KINDER,

Plaintiff - Appellant,

v.

DONA LOSHONKOHL

Defendant- Appellee.

No. 06-55445

D.C. No. 06-cv-00353

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
John S. Rhoades, District Judge, Presiding

Submitted December 6, 2007  
Pasadena, California

Before: SILVERMAN, WARDLAW, AND IKUTA, Circuit Judges.

James M. Kinder appeals the district court's order dismissing his 42 U.S.C. § 1983 claim against Dona Loshonkohl for lack of subject matter jurisdiction. Kinder's § 1983 claim asserts federal question jurisdiction based on his contention that California Civil Code § 47.5 is unconstitutional and seeks an injunction

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

against enforcement of a judgment Loshonkohl won against him under § 47.5 in the state courts.

The district court correctly concluded that it lacked subject matter jurisdiction to adjudicate Kinder's claim. In *Gritchen v. Collier*, 254 F.3d 807 (9th Cir. 2001), we held that an officer's filing of a § 47.5 defamation action is not taken under color of state law, which is a "jurisdictional requisite for a § 1983 claim." *Id.* at 812 (citing *West v. Atkins*, 487 U.S. 42, 46 (1988)).

**AFFIRMED.**